

OPLA RESEARCH REQUEST MEMO

To: Janet Stocco, Legislative Analyst, VLA Committee

From: Kristin Brawn, Legislative Researcher

Date: March 23, 2022

RE: State Independent Reviews of National Guard Sexual Harassment/Assault Policies and Procedures

Hi Janet,

You asked me to research whether other states have conducted independent reviews of their National Guards' policies and procedures regarding sexual assault and/or sexual harassment. I found three states, Alaska, Wisconsin and Vermont, where the National Guard Bureau's (NGB) Office of Complex Investigations (OCI) has conducted an independent review of the National Guard's policies and procedures at the request of either the state's governor or the Guard's Adjutant General. In addition to the OCI reviews, Alaska and Wisconsin state governments also conducted their own independent reviews. Below are brief descriptions of each state's independent reviews, and I have included hyperlinks to the reports from each investigation, if available.

I. Alaska

[A. OCI Review](#)

In 2014, Governor Parnell submitted a request to the NGB that the OCI investigate "open and closed investigations related to reports of sexual assault, rape, and fraud among members of the Alaska National Guard." The request highlighted concerns over reports of sexual assault and allegations of a hostile work environment within the Alaska National Guard (AKNG). The Governor's request also sought an overall assessment of the Guard's command structure and its responses in cases of sexual assault that were otherwise referred to civilian law enforcement for disposition.

The OCI Assessment Team, appointed by the NGB, developed an action plan for its investigation which included: conducting a statewide command climate survey; collecting identified data requirements; conducting on-site interviews at all major AKNG locations; interviewing all AKNG senior leaders and coordinating with Army Criminal Investigation Division (CID) and local Alaskan law enforcement officials. In response to the allegations of sexual assault, the Team focused on four areas: review of reported allegations of sexual assault and the actions taken regarding those reports; interviews with victims of the reported sexual assaults, which included both unrestricted and restricted reports; review of AKNG sexual assault policies, practices, training and command emphasis; and review of the results of the statewide command climate survey (specifically, the responses to questions regarding sexual assault).

The OCI Team found:

- The AKNG's Sexual Assault Prevention and Response (SAPR) Program was well-organized, but victims did not trust the system due to an overall lack of confidence in the command;
- The AKNG leadership failed to provide the resources, emphasis, and oversight in the implementation of the AKNG Equal Employment Opportunity/Equal Employment (EEO/EO) program;
- The AKNG did not have a formal mechanism to facilitate coordination with local law enforcement regarding cases of misconduct committed by members of the AKNG;
- There were several instances of fraud committed by AKNG members and leadership at the facilities level, but this fraudulent activity did not have an impact on the reporting of sexual assaults;
- Actual and perceived favoritism, ethical misconduct, and fear of reprisal eroded trust and confidence in AKNG leadership; and
- The AKNG was not properly administering justice through either the investigation or adjudication of AKNG member misconduct.

The OCI Assessment Team recommended:

- Continue the education of AKNG service members on the SAPR program, to include the availability of resources, advocates, counsel and information regarding confidential reporting options.
- Improve the reporting process to ensure victims' information is kept confidential.
- Ensure action taken in each of the cases investigated is shared with the victim through the VA program. Specific guidance is outlined and required by DoDI 6495.02.
- Develop ways to provide transparent and informed justice regarding sexual assault matters, as well as other misconduct, to shift the culture from acceptance to accountability.
- Reinforce leadership education on the SAPR program and investigative resources available to the command.
- Set the tone for sexual assault and harassment awareness by strengthening the policies that are meant to educate soldiers and airmen about respect and responsibility for one another.
- The AKNG Sexual Assault Response Coordinator needs to reinforce training on reporting options with special emphasis on who can take a restricted report.
- All allegations of misconduct under investigation by local law enforcement be tracked by the Office of the Staff Judge Advocate or a law enforcement liaison, such as a Provost Marshall Officer. Additionally, when appropriate, the Staff Judge Advocate should make recommendations for administrative action pending the finding of local law enforcement officials, to include removal from the AGR program.

B. Special Investigator's Report

In 2015, Alaska Attorney General Craig Richards retained retired Alaska State Court judge Patricia Collins to review the circumstances surrounding the handling of AKNG sexual abuse and harassment allegations reported by some AKNG service members between 2010 and 2014. The requested investigation called for a written report of findings including the following: (1) the nature of each allegation investigated, including information available and not available; (2) whether the allegation was subject to the Department of Defense's Restrictive Reporting System; (3) whether the known allegation was adequately investigated by state or local law enforcement and if any improprieties occurred; (4) whether reports by local or state law enforcement were forwarded to state or local prosecutors and whether the reports included a recommendation on prosecution; (5) whether appropriate action was taken by the assigned prosecutors; (6) whether the contents of an investigation by state or local law enforcement was communicated to state executive branch employees and, if so, whether appropriate action was taken by the employees who were provided with the investigation materials; (7) an opinion whether any of these cases require further investigation; and (8) recommendations for handling such matters in the future.

Judge Collins' report found that:

- Members of the AKNG were not reporting sexual assaults to the AKNG Sexual Assault Response Coordinators (SARCs) because they did not trust their command to help them. Instead, they were reporting to National Guard chaplains and others.
- Victims did not trust their command because victims' confidentiality had been breached within the command. As victims lost trust in the reporting process, many failed to report assaults through the proper channels.
- The command climate at the AKNG was not conducive to reporting complaints of sexual harassment or sexual assault prior to 2013. While a system existed for reporting sexual assaults, the environment of the AKNG resulted in significant fear of retaliation by Guard members for reporting allegations of sexual assault.
- The AKNG Military Code prevented the AKNG from prosecuting military offenses such as sexual assault. As a result, Guard members who violated the existing code were only subject to administrative penalties and they could not be fined, imprisoned or dishonorably discharged.
- There were 16 sexual assault reports made to AKNG officials between 2010 and 2014. In 10 of those cases, AKNG members were identified as alleged perpetrators. Most but not all of the cases were properly investigated by law enforcement. Additionally, some cases resulted in personnel actions taken against the alleged perpetrator up to and including "other than honorable discharges."
- There were allegations of sexual misconduct in certain personnel documents that went unaddressed, likely adding to the distrust of the AKNG Command. The kind of conduct described in these allegations included sexual relations with AKNG members of a lower rank; sexual relations during work hours or in

AKNG buildings; and hostile work environment issues. Few of these allegations were investigated or otherwise addressed prior to 2013.

- Sexual abuse, assault, and harassment were significantly under-reported, and that there were unique barriers to reporting in the AKNG. Judge Collins specifically noted, “command climate issues present at multiple levels in the Alaska National Guard between 2010 and 2014, likely impeded sexual assault and harassment reporting.”

The report made several recommendations, including:

- Supervisory personnel should listen to the chaplains
- Protect victim confidentiality and promote expanded victims’ rights
- Acknowledge and apologize for past mistakes
- Seek authorization for continued Alaska-based Special Victims Counsel
- Expand State resources for the silent victims; and
- Maintain a summary of all climate survey and sensing data on leadership, and report to the Governor.

C. Department of Administration Review

In 2020, Governor Dunleavy directed Alaska’s Department of Administration (DOA) Oversight and Review Unit (O&R) to conduct a statewide assessment to ensure the state was properly addressing any allegations of sexual assaults, sexual harassment or retaliation occurring in the Department of Military and Veteran Affairs (DMVA). The DOA O&R conducted the review with the assistance of the AKNG. The objectives of this review were: (1) To identify improvements that have been made following issues related to sexual harassment and assault identified within the AKNG between 2010 and 2014; and (2) To assess instances of misconduct allegations and evaluate how incidents were handled by the Command in the past and would be handled if they occurred presently. The review sought to determine if corrective recommendations made previously were implemented by the AKNG, and if so, what current effect implementation had on the AKNG’s organizational climate.

The DOA O&R review found that:

- The AKNG command has fully addressed and implemented recommendations made by Judge Collins in 2015, and the NGB OCI in 2014 regarding equal opportunity, sexual harassment, discrimination and retaliation issues.
- The AKNG command adequately and appropriately responds to allegations of sexual assault or harassment by Guard members.
- The AKNG educates Guard members and trains command staff to appropriately respond to allegations of misconduct, but Guard members’ survey responses demonstrated that retention of knowledge in this area has declined over 3 years.
- The AKNG current command has instituted an “open-door” policy, encouraging victims of sexual assault/harassment to come forward. The command fully supports sexual assault prevention and response and does not allow misconduct to go unaddressed.
- The AKNG has seen marked progress in the willingness of Guard members to report and in the command’s willingness to act regarding sexual assault/harassment. However, AKNG command recognizes that its mission in guaranteeing Guard members’ security and confidence is ongoing and complex.
- Based on extensive Guard member interviews, the review determined that there is a renewed trust in the AKNG’s command and improvement in the AKNG culture.

The DOA O&R review made several recommendations:

- Require advanced Sexual Harassment/Assault Prevention and Response Program (SHARP) Training for leadership.
- Increase efforts to educate Guard members on sexual assault reporting knowledge.
- Establish an official channel of information sharing with civil authorities.
- Continue to work with the National Guard Bureau to retain a full-time Military Judge.
- Consider mirroring active duty Sexual Assault Response Coordinator (SARC) staffing for the AKNG.
- Establish an e-mail address for AKNG members to communicate directly with the Adjutant General for allegations not handled or allegations not reported for fear of reprisal

- Add “Quick Links” for the Sexual Assault Prevention and Response and Suicide Prevention Program sites to the DMVA main website.

II. Wisconsin

A. OCI Review

In 2019, Governor Evers and U.S. Senator Tammy Baldwin requested assistance from the NGB OCI to provide a detailed assessment of the Wisconsin National Guard’s (WING) sexual assault and harassment reporting procedures, investigation protocols and accountability measures. Specifically, Governor Evers and Senator Baldwin requested that the assessment team: (1) Review allegations made by service members of the Wisconsin National Guard through state and federal lawmakers and officials; (2) Review allegations related to hostile work environment; (2) Examine the WING’s coordination with local law enforcement; (3) Examine the WING’s use of command-directed investigations for allegations of sexual assault; (4) Conduct a statewide survey of the WING’s culture and climate regarding sexual assault and sexual harassment, including on-site interviews with all major subordinate commands; and (5) Assess the WING’s adherence to and implementation of Department of Defense (DoD) and NGB policies and procedures under the Sexual Assault Prevention and Response (SAPR) program.

The OCI Assessment Team, appointed by the NGB, developed an action plan for its investigation which included: the conduct of: a state-wide command climate survey of the WING; collection and analysis of relevant documents; on-site interviews of complainants and subject matter experts of the WING; and site assessments visits and canvassing of WING service members.

The Team made 22 separate findings and 21 recommendations in the areas of (1) SAPR program implementation and management; (2) sexual assault investigations; (3) sexual harassment and equal opportunity program implementation; (4) accountability through administrative and disciplinary actions; and (5) command climate. Overall, the Team found that the WING’s programs and systems for handling allegations of sexual assault, sexual harassment, and other workplace or service-related misconduct were non-compliant with federal law and regulation, and in various respects, deficient or failing. The WING’s deliberate decision to conduct internal, command-directed investigations of sexual assault allegations were found to be in direct violation of Department of Defense; Chief, National Guard Bureau; and Service regulations and policies. These internal investigations were deficient in a number of ways that adversely impacted commands' efforts to properly support victims of sexual assault and hold offenders accountable. The Team found the WING assumed unnecessary risk in its non-compliant and/or deficient implementation of programs and systems related to sexual assault, sexual harassment, and other workplace or service-related misconduct, and this manifested into deleterious effects on individuals who looked to the organization for adjudication, care, and support.

Despite the issues with program compliance, the Team found that the overall climate within the WING is positive. Service members reported a high level of confidence and trust in their immediate leaders which has resulted in high retention across the force. Apart from a perception of favoritism and fraternization in the organization, the Team did not discern any specific adverse effects to the entire enterprise of the WING due to the deficiencies and failures in its programs and systems related to sexual assault, sexual harassment, and other workplace or service-related misconduct.

The OCI Team made three recommendations:

- Update or correct all written policies and procedures, protocols and practices to conform with federal law, regulation and policy;
- Request an NGB staff assistance visit from relevant program offices to facilitate program, system and relationship updates, corrections, and improvements; and
- Reinforce program management tools, processes, and services through more deliberate communication and coordination with internal, external, and higher-echelon partners and resources.

Following the release of the OCI report, Governor Evers issued [Executive Order #62](#) on December 9, 2019, which directed the WING to submit, within 60 days of the order, a corrective action plan, which would detail a plan for implementing each of the 21 recommendations in the NGB OCI report and identify strategies to prevent sexual

assault, sexual harassment and other sexual misconduct, including best practices from other states' national guards. On February 6, 2020, the WING submitted its [corrective action plan](#), which was approved by the Governor.

More recently in a February 14, 2022, [press release](#), Governor Evers announced that the NGB OCI officially closed out its assessment of the WING's sexual assault prevention and response programs. A detailed timeline of the WING's collaboration with the NGB Implementation Team to implement the corrective action plan is included in the press release.

[B. Department of Justice Review](#)

In 2021, the Wisconsin Department of Justice (DOJ) conducted a review of more than 30 sexual assault cases previously investigated by the WING between 2009 and 2019. Each case was reviewed for an assessment of whether further investigation was needed and whether the cases should be referred to a district attorney. To conduct this review, DOJ assembled two separate multi-disciplinary teams (MDTs) to review every unrestricted report of sexual assault made to WING between 2009 and 2019. Each MDT consisted of a prosecutor from the DOJ Criminal Litigation Unit, a special agent from the DOJ Division of Criminal Investigation (DCI) and a victim specialist from the DOJ Office of Crime Victim Services (OCVS). DOJ selected each member of the MDTs because of their extensive experience working on sexual assault cases. Following review by the MDTs, a larger group from DOJ, including leadership from the Division of Legal Services, DCI, and OCVS, met regularly to discuss each case and recommended next steps. Based on these discussions, the MDTs conducted additional review, connected with local law enforcement or at times contacted the survivor or their representative.

While the review did not result in any new criminal charges, the DOJ made the following observations regarding the cases it reviewed:

- [Fraternization and Alcohol](#) – Some of the cases involved complaints of and investigations into fraternization between National Guard members of different grades or ranks, and many of the cases involved the consumption of alcohol by alleged offenders. DOJ reviewed Chapter 4 of Army Regulation 600-20, which addresses prohibited relationships and fraternization between soldiers (4-14 – 4-16). While DOJ recognizes that this is an Army Regulation, not a rule specific to WING, and DOJ does not have expertise regarding this rule or how it was developed, DOJ found the explanation of the difference between permitted and prohibited relationships complicated and subject to misinterpretation. The consequences for violations are also highly discretionary. The “prohibited relationships” described in AR 600-20, Chapter 4, should be more plainly and succinctly expressed and defined, and the consequences for violations should be clear and reflect the seriousness of the abuse of position and power inherent in these violations. Focused trainings on a regular basis addressing the rules regarding fraternization, the reasons for the rules, the avenues for safe reporting including whistle-blower protections, recommended practices for bystander intervention, and penalties for violating fraternization policies could also increase compliance with the rules and promote prompt reporting and intervention. In addition, the dangers associated with excessive consumption of alcohol should be taken into account and regularly emphasized, including through trainings and in the review and approval of WING events.
- [Investigations](#) – Some of the cases reviewed by DOJ involved investigative measures taken by WING that were not conducted in a trauma-informed manner, and in at least one case investigated by OCI, disciplinary investigations were unacceptably intertwined with the sexual assault investigation. Sexual assault investigations should always be undertaken based upon trauma-informed methods and protocols and be independent from other investigations. Investigations should also commence as promptly as possible following the filing of an unrestricted report.
- [Victim Services](#) – In some cases, there was a failure to keep survivors well-informed of the status of their report. To ensure continuity of advocacy and representation, to the extent possible the special victims' counsel (SVC) program coordinated by the NGB should assign the same SVC to a survivor until the case is closed. The survivor and their SVC should be kept apprised of the status of the investigation, and survivors should have the opportunity to ask questions and offer input for consideration.

III. Vermont

A. OCI Review

In 2019, the Adjutant General of Vermont requested assistance from the NGB OCI to provide a detailed assessment of the Vermont National Guard's (VTNG) command climate and systems with the end state of improving the Vermont National Guard and ensure the Governor's and his priorities are being implemented. Specifically, the Adjutant General requested that the assessment team: (1) Review and assess for the past three years any system/process issues with adjudication of misconduct within the VTNG and the punishment that resulted; (2) Review and assess any system/process issues with investigation of misconduct performed by the VTNG consistent with policy and regulation; (3) Review and assess incidents of discrimination or sexual harassment or violations of Equal Employment Opportunity/Equal Opportunity (EEO/EO) policy within the VTNG and any action that resulted; (4) Review and assess incidents of hazing, bullying, maltreatment of subordinates within the VTNG and action that resulted; (5) Review and assess the efficacy of the selection, promotion, and placement policies within the VTNG for both officer and enlisted, AGR, Technician and Title 5 positions; (6) Conduct a statewide survey of the VTNG's culture and climate, including onsite interviews with all major subordinate commands; and (7) Assess the VTNG's adherence to and implementation of DoD and NGB policies and procedures under the EEO/EO and Sexual Assault Prevention and Response (SAPR) program.

The OCI Assessment Team, appointed by the NGB, developed an action plan for its investigation which included the conduct of a state-wide command climate survey of the VTNG; collection and analysis of relevant documents; on-site interviews of complainants and subject matter experts of the VTNG; and site assessments visits and canvassing of VTNG service members.

The findings of the OCI Assessment Team in regard to sexual assault and sexual harassment prevention and response included the following:

- The VTNG's written policies on sexual assault are generally consistent with current federal law, regulations, and policy; however, they lack specifics to ensure compliance within the major commands of the VTNG.
- The Team found examples of optimal victim services on the part of the SARCs; however, ineffective program management strategies and tools hampered optimal SAPR program performance.
- Historically, the VTNG Sexual Assault Prevention and Response Program failed to properly report and track sexual assault allegations and case data; but has improved since 2017 to the present time.
- Case management for unrestricted reports of sexual assault was deficient, mismanaged, and, in certain circumstances, absent; but has improved during the period of the assessment, 2017 to the present.
- Manpower, resourcing and credentialing were reported as deficient for the VTNG's SAPR Program, which has contributed to program inefficiencies and diminished performance.
- The VTNG SAPR Program is unable to meet the operational demand for the SAPR program as it is currently resourced.
- The VTNG does not maintain any memoranda of understanding (MOUs) or memoranda of agreement (MOAs) with community-based resources to enhance prevention or response efforts.
- The Vermont Army National Guard (VTARNG) and Air National Guard (VTANG) SAPR programs do not coordinate and collaborate effectively for purposes of facilitating state-level program management.
- The VTNG collaborates and coordinates with civilian law enforcement organizations prior to conducting (and during) the administrative investigation of sexual assault allegations; however, internal coordination and communication on the status of civilian law enforcement investigations can be improved.
- Sexual assault reporting knowledge was deficient in certain Army National Guard units.
- VTNG service members generally found their sexual assault prevention and response climate to be adequate.
- The Team found some instances in which the local command did not attend to, let alone prioritize, victims' needs and interests.
- The VTNG historically conducted unauthorized command-level investigations into alleged sexual assaults, but has improved since for the period of this assessment, 2017 to 2020 and has properly referred unrestricted reports to appropriate investigatory entities.

The OCI Team made several recommendations:

- The program must continue with its update of SAPR/SHARP policies, with emphasis on maintaining updated references to current Chief of the NGB and DoD Regulations. This will ensure compliance by all command levels with particular emphasis on responsibilities of victims' immediate commanders towards prevention and response.
- The VTNG SAPR/SHARP leader training program should emphasize immediate commanders' responsibilities in response to ensure victim, safety, communication, and reporting through SAIRO reporting and participation in the VTNG CMG.
- VTNG SAPR/SHARP training should be accounted for in accordance with regulatory requirements to ensure compliance with training requirements of personnel. The SAPR program maintains SARCs and Victim Advocates on their list of assigned personnel who are no longer certified or assigned and therefore, it is difficult to determine which are in need of training or no longer assigned as SARCs or Victim Advocates.
- Based on current data maintained at NGB-J1-SAPR the VTNG SAPR/SHARP program should better sustain required number of SARCs and Victim Advocates in each Brigade/Battalion/Group or Squadron. Historically, the VTANG SAPR and VTARNG SHARP program has been unable to maintain sufficient number of SARCs and VAs for several reasons including promotion, transfer, and attrition. The program requires better coordination with the HRO/G1 and commands to prepare for life cycle maintenance of sufficient number of SARC and VA staffing within the WING SAPR and VTARNG SHARP program. e.
- Historically, the VTNG, in particular the VTANG, investigated sexual assault allegations incorrectly via command directed investigations, although, there has been significant improvement since 2017 with referral of sexual assault matters to military criminal investigative organization, civilian law enforcement or OCI for investigation.

IV. Additional Resources

[Chief National Guard Bureau, Instruction for National Guard Complex Administrative Investigations](#)

[Chief National Guard Bureau Manual, National Guard Complex Administrative Investigations Procedures](#)